

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ANTOINE T. SIMMONS,

Plaintiff,

-against-

HEIDE MASON, et al.,

Defendants.

**ORDER ADOPTING REPORT
AND RECOMMENDATION**

17-CV-08886 (PMH) (AEK)

PHILIP M. HALPERN, United States District Judge:

Antoine T. Simmons (“Plaintiff”), proceeding *pro se*, proceeds under 42 U.S.C. § 1983 against Yonkers City Police Officers Api, Lebzetter, McManus, Spaun, and Dr. Frank Weber (collectively, “Defendants”). (*See* Doc. 91).¹

On August 14, 2019, Judge Karas referred this matter to Magistrate Judge Smith for general pretrial matters. (Doc. 126). On June 8, 2021, this Court issued an Amended Order of Reference referring this matter to Magistrate Judge Krause for general pretrial matters and dispositive motion practice. (Doc. 200).² On March 16, 2022, Magistrate Judge Krause granted Defendants leave to seek dismissal in light of Plaintiff’s failure to participate in the action. (Mar. 16, 2022 Min. Entry). Magistrate Judge Krause directed during that conference that: (1) Defendants’ moving papers be

¹ Judge Karas, before whom this matter proceeded before being transferred to this Court on April 16, 2020, issued an Opinion & Order on September 17, 2019 dismissing Westchester County Assistant District Attorney Nadine C. Nagler, Warden Diaz, Dr. Sheldon Teperman without prejudice to filing a Third Amended Complaint within thirty days thereof. (Doc. 130). Judge Karas dismissed those parties with prejudice on February 27, 2020. (Doc. 136). Approximately one year later, on March 26, 2021, this Court issued a Memorandum Opinion and Order dismissing Dr. Audrey Pendleton and Dr. Elliot K. Lee from this action. (Doc. 184). Each of these decisions is available on commercial databases. *See Simmons v. Mason*, No. 17-CV-08886, 2021 WL 1164573 (S.D.N.Y. Mar. 26, 2021); *Simmons v. Mason*, No. 17-CV-08886, 2020 WL 953527 (S.D.N.Y. Feb. 27, 2020); *Simmons v. Mason*, No. 17-CV-08886, 2019 WL 4525613 (S.D.N.Y. Sept. 18, 2019).

² This matter was reassigned from Magistrate Judge Smith to Magistrate Judge Krause on October 15, 2020.

served and filed by March 30, 2022; (2) opposition papers be served and filed by April 18, 2022; and (3) a conference be held by telephone on April 27, 2022. (*Id.*).

Defendants filed their motion papers on March 30, 2022. (Doc. 209; Doc. 210; Doc. 211). Plaintiff failed to file any opposition papers and did not appear at the April 27, 2022 conference. (*See* Apr. 27, 2022 Min. Entry).

Magistrate Judge Krause, in a Report and Recommendation (“R&R”) dated May 4, 2022, “recommend[ed] that the motions to dismiss . . . be GRANTED, and that Plaintiff’s action be dismissed with prejudice.” (Doc. 212).

Under 28 U.S.C. § 636(b)(1), the parties have fourteen days after being served with a copy of a report and recommendation within which to serve and file written objections “as provided by rules of court.” *See also* Fed. R. Civ. P. 72(b). If the report and recommendation is served by mail, the parties have an additional three days to serve and file objections, resulting in a total of seventeen days. Fed. R. Civ. P. 6(a), (d). Accordingly, because a copy of the R&R was mailed to Plaintiff at the address listed on the docket on May 4, 2022, objections were required to have been served and filed on or before May 23, 2022. No objections have been filed in this matter.

“A district court reviewing a magistrate judge’s report and recommendation ‘may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.’” *Antoine v. Warden*, No. 20-CV-05130, 2021 WL 4066654, at *1 (S.D.N.Y. Sept. 7, 2021) (quoting 28 U.S.C. § 636(b)(1)). “The district court may adopt those portions of the recommended ruling to which no timely objections have been made, provided no clear error is apparent from the face of the record.” *Olivo v. Graham*, No. 15-CV-09938, 2021 WL 3271833, at *1 (S.D.N.Y. July 30, 2021) (citing *Wilds v. United Parcel Serv., Inc.*, 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003)).

Upon a careful and complete review, the Court finds no clear error in Magistrate Judge Krause's thorough and well-reasoned analysis, and adopts the R&R in its entirety for the reasons set forth therein. Consequently, Defendants' motions to dismiss for failure to prosecute are GRANTED and this matter is dismissed with prejudice.

The Clerk of the Court is respectfully directed to mail a copy of this Order to Plaintiff and the address listed on the docket, enter judgment accordingly, and close this case.

SO ORDERED:

Dated: White Plains, New York
May 31, 2022



PHILIP M. HALPERN
United States District Judge